

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED

MAR 23 2007


CLERK

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
TRANSPORTATION and FEDERAL
MOTOR CARRIER SAFETY
ADMINISTRATION,

Petitioners,

v.

HEARTLAND ORGANIC FOODS, INC.,

Respondent.

CIV 06-1028

ORDER AND OPINION

Petitioners, as shown above, have previously filed a petition with declarations and other filings. This court, acting pursuant to 49 U.S.C. § 502(d), issued an Order (Doc. 5) which was filed on September 27, 2006. This Order was served on Beverly Paulson on October 5, 2006. To date, there has been no compliance with the Order. Instead, Eugene Paulson as the chief executive officer of Heartland has engaged in a letter writing campaign, questioning the authority of this court. Petitioner has no obligation to provide legal advice to Heartland Organic Foods, Inc. ("Heartland"), its officers, or directors. Petitioners have no obligation to explain an order issued by this court.

Following non-compliance, petitioners submitted moving papers to the court, asking the court to issue an order to show cause, directing Eugene Paulson to appear. The submissions were deemed incomplete by the court and the court provided a memorandum to AUSA Andrew Damgaard (Doc. 12). The court does not issue orders to

show cause without a showing in advance as to who was directed to do what and by what deadline.

A declaration (Doc. 18) has now been filed. It appears that the board of directors of Heartland consists of Gary Ehlers, Eugene Paulson, and Beverly Paulson. The officers are the same. A corporation obviously acts only through its officers, agents, and directors. This court will give such named persons and Heartland an additional opportunity to comply fully and in good faith with the directive of this court and to do so without further delay. Failure to comply will result in the court issuing an Order to Show Cause requiring each such named person and Heartland to appear and show cause, if any there be, why each such named person should not be found to be in contempt of court and punished accordingly. The necessary showing has been made and the petition filed should be granted.

Now, therefore,

IT IS ORDERED, as follows:

1) Gary Ehlers, Eugene Paulson, and Beverly Paulson, personally and on behalf of Heartland, shall each appear personally at the South Dakota Highway Patrol office, Aberdeen District Office, at 2731 West Highway #12, Aberdeen, South Dakota, on Monday, the 30th day of April, 2007, at 10:00 o'clock a.m., for the purpose of completing a compliance review as to Heartland.

2) Gary Ehlers, Eugene Paulson, and Beverly Paulson, personally and on behalf of Heartland shall each complete and see to the completion of the compliance review, bringing with them at the designated time and location specified above all papers, documents, and records listed in the administrative subpoena (directed to Herman E. Paulson as president of Heartland, Herman E. Paulson apparently being the same person as "Eugene Paulson") dated April 26, 2006, a copy of which is attached hereto and made a part hereof.

3) This Order including the attachment shall be served on Gary Ehlers, Eugene Paulson, and Beverly Paulson, personally and as officers and directors of Heartland. Proof of service shall be filed. Service may be made by the United States Marshals Service or a sheriff or deputy sheriff of the county of the residence of the parties to be served. Any attempt by any named person to avoid service shall be reported to the court.

4) Failure to comply promptly and in good faith with this Order will result in the issuance of an Order to Show Cause as to why each of the persons named should not be required to appear personally before this court and, if found to be in contempt of this court, punished accordingly.

Dated this 23rd day of March, 2007.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK.

BY: Baileana J. Wapke DEPUTY

(SEAL)

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

SUBPOENA

**To: Herman E. Paulson
President
Heartland Organic Foods, Inc.
US DOT 659858**

at

**46809 Market Street
Victor, SD 57260**

and/or

**46809 Market Street
Rosholt, SD 57260**

At the instance of the Division Administrator, South Dakota Division, Federal Motor Carrier Safety Administration and pursuant to authority granted to the Secretary of the Department of Transportation in 49 U.S.C. §502, you are hereby required to appear before Dudley Feige, Safety Investigator, of the Federal Motor Carrier Safety Administration at the South Dakota Highway Patrol (SDHP) Aberdeen District Office at 2731 West Highway #12, Aberdeen, South Dakota, 57402 on the 11th day of May 2006, at 10:00 o'clock AM of that day on a matter of investigation into the safety compliance of the commercial motor carrier operations of Heartland Organic Goods, Inc. ("Heartland Organic").

INSTRUCTIONS:

- 1. The descriptions of documents, records, or papers specified herein are for convenient reference and identification and are intended to apply to the items named**

regardless of what the records are called in individual companies and regardless of the record media.

2. Unless otherwise stated, the time period covered by this demand is for January 2005 through May 2006.

YOU ARE HEREBY REQUIRED TO BRING WITH YOU AND PRODUCE AT SAID TIME AND PLACE THE FOLLOWING PAPERS, DOCUMENTS AND RECORDS:

1. A list of all drivers employed or used by Heartland Organic for calendar years 2005 and 2006. This list shall include first name, last name, hire date and/or termination date, and driver's license number.
2. Driver qualification files for each driver used or employed for calendar years 2005 and 2006. Included with each file shall be all records and information required by 49 C.F.R. 391, including, but not limited to:
 - A. Medical exam/certificate and/or examination reports
 - B. CDL (commercial drivers license) and any other licensing information
 - C. Information received from previous employers
 - D. Driver history/records requested prior to hiring
 - E. Annual certification/list of violations by the driver and annual review of driving record
 - F. Dates hired or first date driver was used by motor carrier
3. All dispatch records in connection with the routing and tracking of drivers.
4. All driver payroll records, timesheets and other documents that are used to determine a driver's pay.
5. All invoices, charters, memorandums of agreement with customers and/or brokers or other related documents that are used by the motor carrier to claim reimbursement for services rendered.
6. All Alcohol and Controlled Substances Testing files, records and information required under 49 C.F.R. Part 382 and/or Part 40 for calendar years 2005 and 2006. This shall include:

- A. Control and custody forms for all controlled substances and alcohol testing samples given by each driver, including pre-employment, random, reasonable suspicion, post accident and return to duty tests
 - B. The test results
 - C. Training materials
 - D. Information pertaining to driver refusals to be tested and probable cause determinations to test a driver
 - E. Identity of Medical Review Officer(s) and their addresses
 - F. Laboratories and collection sites utilized, including the addresses for each
 - G. Action(s) taken against employees with positive results
 - H. Driver selection lists used for random controlled substances and alcohol testing
 - I. Driver's signed release of controlled substances and alcohol testing information
 - J. Previous employer responses
7. In addition to the information detailed in number 6, the following information must be provided:
- A. Average number of driver positions for calendar years 2005 and 2006
 - B. Number of random controlled substances tests conducted for calendar years 2005 and 2006.
 - C. Number of random alcohol tests conducted for calendar years 2005 and 2006
 - D. Number of pre-employment tests conducted in calendar years 2005 and 2006
 - E. Number of CDL drivers hired or used for the first time in calendar years 2005 and 2006
8. A list of all accidents (as defined in 390.5) for calendar years 2005 and 2006. For each accident all information identified in 390.15(b) must be provided. The required information includes, but is not limited to:
- A. Accident reports
 - B. Identity of driver involved in each accident, all correspondence between the motor carrier and its insurance company regarding insurance coverage and/or the motor carrier's drivers

- C. Documentation regarding collision and bodily injury claims involving your vehicle, including the dollar valuation in each claim, and any resulting settlement of the claim
 - D. All written communication regarding each accident involving your vehicles
 - E. Total Fleet mileage
9. Names of all insurance companies used in calendar years 2005 and 2006 for compliance with minimum liability insurance requirements in 49 C.F.R. Part 387. This must include company name, agent, address and telephone number. Copy of form MCS-90, MCS-82 and proof of Cargo Liability Insurance for calendar year 2005 and 2006 must be provided.
 10. Certificate of operating authority issued by the Federal Motor Carrier Safety Administration.
 11. List of all vehicles. List shall identify each vehicle by vehicle number, make, model, serial number, gross vehicle weight rating, and license plate number with state identification. For each vehicle identified, all records required by 49 C.F.R. Part 396 shall be provided.
 12. All maintenance records, road side inspection reports, repair files, records and/or documentation required under 49 C.F.R. Part 396. Such information shall include, but is not limited to, each vehicle's periodic inspection, documentation relating to the periodic and systematic preventative maintenance routine and repairs that were performed as a result.
 13. All Driver's Daily Vehicle Inspection Reports for the past six (6) months.
 14. All records of duty status for each driver used or employed within the past 6 months. Accompanying each record of duty status shall be all supporting documentation, including, but not limited to, trip reports, toll receipts, fuel receipts, fuel reports, charters, dispatch records, miscellaneous expense receipts, roadside inspection reports, bills of lading, invoices and payroll records.
 15. Calendar years 2005 and 2006 corporate Internal Revenue Service income tax documents.
 16. Corporation registration documents and a list of corporate officers and/or owners of the company by name and title.

17. A list of the total mileage for all commercial motor vehicles operated by Heartland Organic during calendar years 2005 and 2006.

FAIL NOT AT YOUR PERIL.

In testimony whereof, the undersigned, an official designated by the Administrator of the Federal Motor Carrier Safety Administration, has hereunto set his hand in Pierre, South Dakota on this 26 day of April 2006.

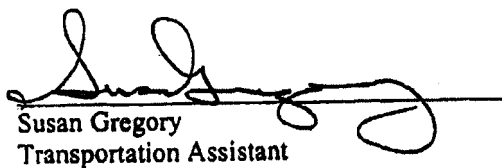

Mark D. Gilmore, Division Administrator

CERTIFICATE OF SERVICE

Heartland Organic Foods

This is to certify that on the 26th day of April, 2006, the undersigned served, by the method indicated, a Subpoena the parties listed below.

Herman E. Paulson President Heartland Organic Foods, Inc 46809 Market Street Victor, South Dakota 57260	Original Federal Express Tracking Number: 7919 2547 8526
Mark Gilmore, Division Administrator U.S. Department of Transportation Federal Motor Carrier Safety Administration 116 E. Dakota Avenue, Suite B Pierre, SD 57501	One Copy Internal Mail


Susan Gregory
Transportation Assistant


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Ship to:	Harman Poulson Heartland Organic Foods, Inc. 46809 Market Street Victor, SD 57260 US 605-637-4220	Package Type: Pickup/Drop Off: Weight: Dimensions: Declared Value: Shipper Account Number:	FedEx Envelope Drop Off 1 LBS 0 x 0 x 0 in 0 USD 261946092
From:	Susan Gregory FMCSA 116 EAST DAKOTA Suite B PIERRE, SD 57501 US 605-224-8202	Bill transportation to: Courtesy Rate Quote Special Services: Purpose: Shipment Type:	284108566 *0.0 Express
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8:16 AM	On FedEx vehicle for delivery	WATERTOWN, SD	
7:57 AM	At local FedEx facility	WATERTOWN, SD	
Apr 26, 2006 8:07 PM	At dest sort facility	SIOUX FALLS, SD	
5:40 PM	Left origin	PIERRE, SD	
4:01 PM	Picked up	PIERRE, SD	
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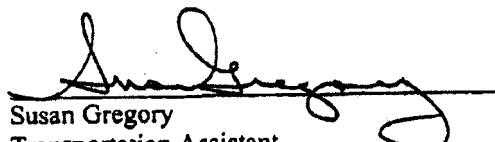
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Mark Gilmore, Division Administrator U.S. Department of Transportation Federal Motor Carrier Safety Administration 116 E. Dakota Avenue, Suite B Pierre, SD 57501	One Copy Internal Mail


Susan Gregory
Transportation Assistant